

DATE: June 6, 2005

TO: Gerald M. O'Brien, Chair
Howard D. Poulson, Vice-Chair
Stephen D. Willett (Air, Waste and Water Management/Enforcement Committee)

FROM: Scott Hassett

SUBJECT: Scope Statement Relating to Revisions to the State Mercury Rule to be Consistent with the federal Clean Air Mercury Rule

Subject/Objective of the Proposed Rule

On May 18, 2005, the federal Clean Air Mercury Rule (CAMR) was promulgated. This rule establishes mercury control requirements for new and existing coal-fired utility boilers. The rule sets a declining cap on mercury emissions in two distinct phases, 2010 and 2018, for each state. A national trading program has been developed as an option for states to achieve their mercury emission cap. New sources (those that commence construction after January 30, 2004) must meet a standard of performance (pounds of mercury per megawatt-hour) and any mercury emissions from these new sources must also be accommodated under the state mercury cap.

From the date of promulgation states have eighteen (18) months to submit to the United States Environmental Protection Agency (USEPA) a state plan to meet the requirements of the CAMR. Failure to submit a state plan by November 18, 2006, will result in the imposition of a federal plan to implement the CAMR in Wisconsin.

Description of Policy Issues/Analysis of Policy Alternatives

An acceptable state plan must meet the requirements of section 111, Standards of Performance for New Stationary Sources, of the federal Clean Air Act. This would include a description of the control measures that will meet the statewide mercury budget and fully adopted rules with the CAMR compliance dates and monitoring, recordkeeping and reporting provisions. States may join the national trading program by adopting the components of the model trading rule USEPA has developed.

State Mercury Rule Interaction

On October 1, 2004, Wisconsin began implementing requirements to reduce mercury emissions from coal-fired boilers operated by major electric utilities in the state. These requirements are included in Chapter NR 446, Control of Mercury Emissions, Wis. Adm. Code. The reduction requirements and compliance schedule in the state rule are more restrictive than the CAMR. Although states are not prohibited from having more stringent requirements than CAMR, the state rule requires that the Department adopt revisions to reflect federal requirements within eighteen (18) months of the promulgation of federal mercury standard. This would include adoption of the federal emission limitations as well as administrative requirements such as monitoring, reporting and recordkeeping.

Flexibility in the CAMR

The CAMR allows states the flexibility to determine how to achieve the required mercury reductions including whether to join the national trading program that would allow interstate trading of mercury allowances. In addition, each state must determine how to allocate the mercury budget that USEPA established to the affected utility units and companies. The 2010 to 2017 annual budget for Wisconsin is

1,780 pounds of mercury which declines to 702 pounds of mercury in 2018 and thereafter. A critical issue is the distribution of this allocation among the four affected electric utilities in the state.

Legal challenge to CAMR

Wisconsin is one of eleven states that have filed a lawsuit challenging the cap and trade approach in the CAMR to achieve mercury emission reductions. The contention is that this approach is inappropriate for a hazardous air pollutant like mercury because meaningful reductions can be significantly delayed and local mercury deposition may not be addressed. These same states, in a separate action, have also challenged USEPA's decision not to regulate mercury emissions from coal-fired power plants under the provisions of section 112, Hazardous Air Pollutants, of the federal Clean Air Act. USEPA chose instead to use the provisions in section 111 of the federal Clean Air Act that allows a more flexible compliance schedule and approach to achieving emission reductions than section 112 provisions. The outcome of these actions may affect this rule revision.

Statutory Authority

Sections 111(a), (b), (c) and (d) of the Clean Air Act [42 USCS sec. 7411(a), (b), (c), and (d)] and Sections 285.11, 285.13, 285.17 and 285.27, Wis. Stats.

Estimate of Time Needed to Develop the Rule

It is estimated that 500 hours will be needed to develop this rule revision.

Summary and Comparison With Existing or Proposed Federal Regulations

The state mercury rule in Chapter NR 446 has different mercury emission reductions and compliance determination requirements. The purpose of this action is to revise the state rule to mirror the federal CAMR requirements.

All Entities Affected by the Rule

The federal CAMR rule affects new and existing coal-fired utility boilers in the state that serve a generator larger than 25 MW that produces electricity for sale. Also affected is any coal-fired co-generation unit that supplies more than 1/3 of its potential electric output capacity and more than 25 MW electrical output to a utility for sale.

A preliminary analysis of the applicability of the CAMR indicates that 48 coal-fired boilers operated by eight electric utilities in the state may be subject to its provisions. The utilities affected are Alliant Energy, Dairy Power Cooperative, Madison Gas & Electric Company, Manitowoc Public Utilities, MidAmerican Energy Company, WE Energies, Wisconsin Public Service Corporation and Xcel Energy.

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